

The Role of Regulation in NCD Prevention

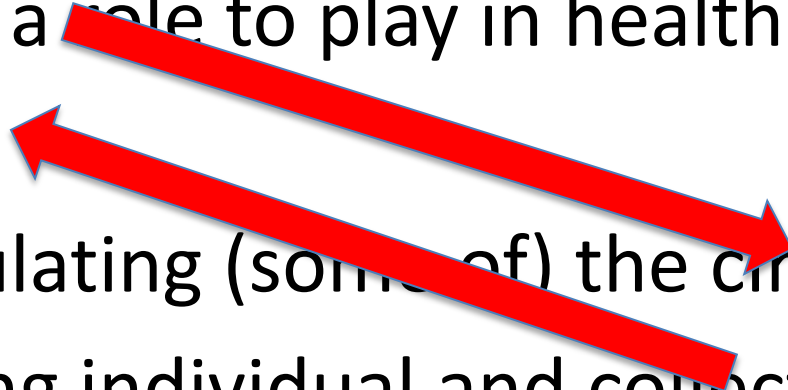
The ‘state of the art’

Alberto Alemanno
HEC Paris
NYU School of Law

my claim

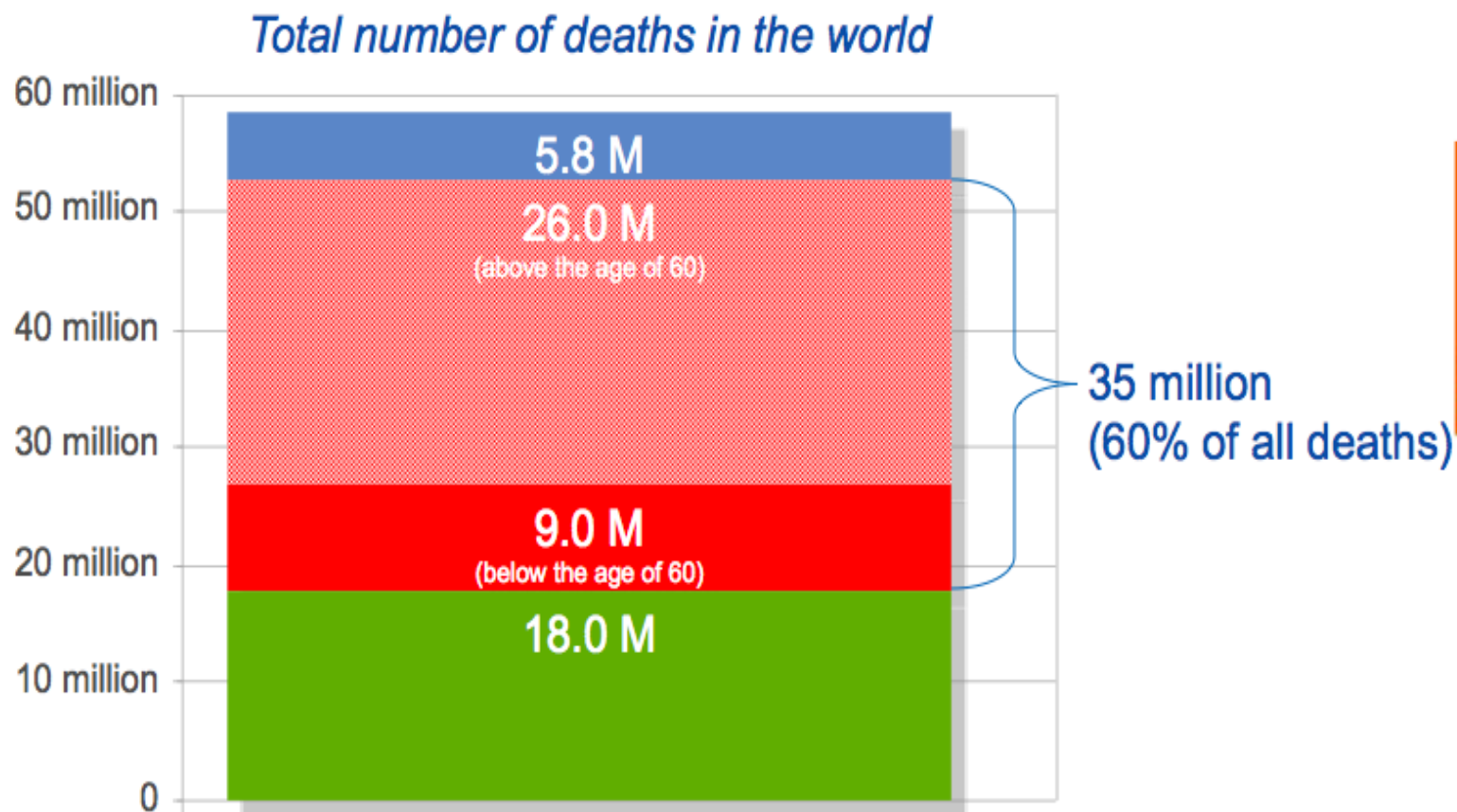
law has a role to play in health promotion

by regulating (some of) the circumstances
determining individual and collective behaviors



NCDs are the single biggest cause of death:

9 million people die every year at young age



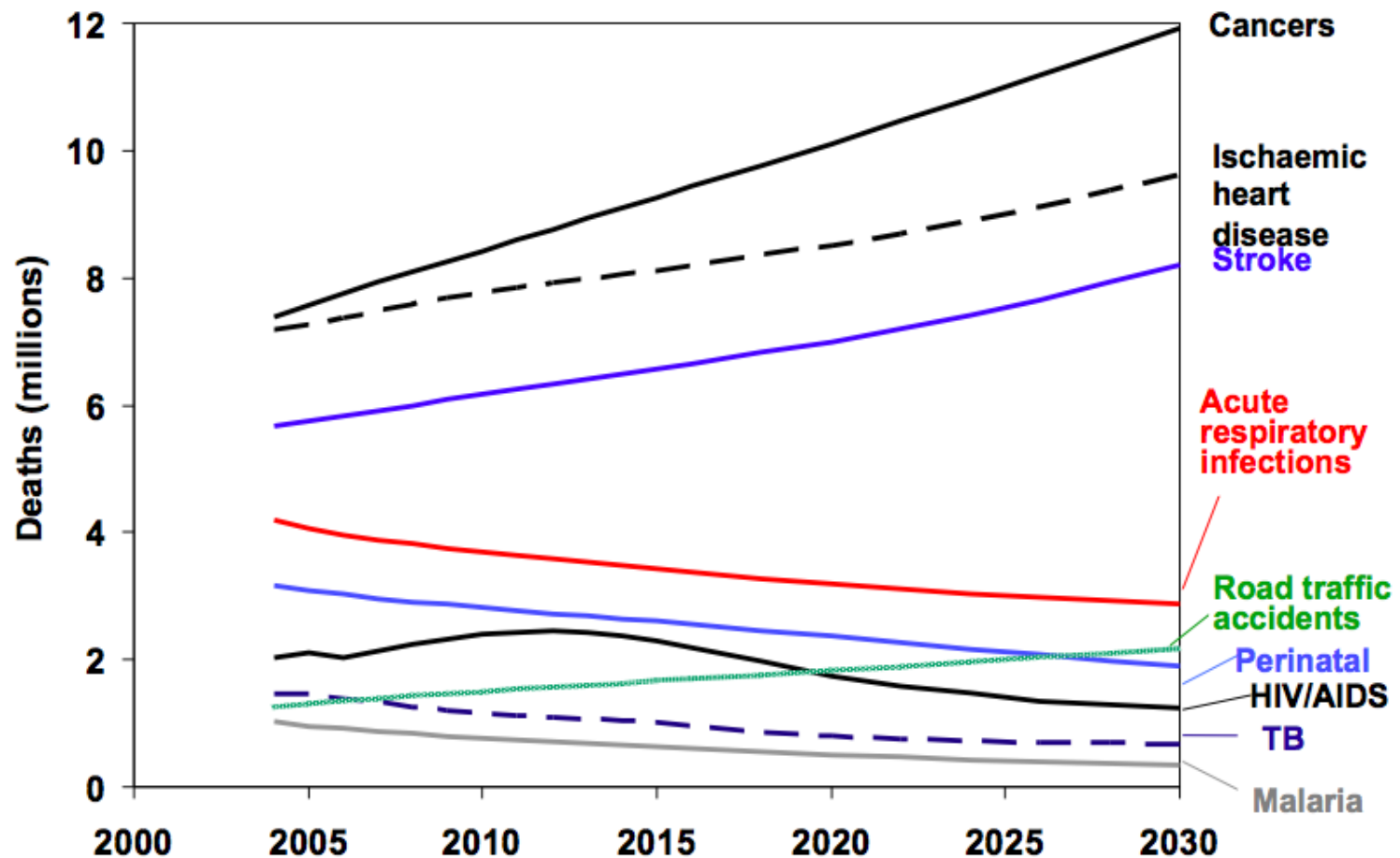
- Group III - Injuries
- Group II – Other deaths from noncommunicable diseases
- Group II – Premature deaths from noncommunicable diseases (below the age of 60), which are preventable
- Group I – Communicable diseases, maternal, perinatal and nutritional conditions

Source:

THE GLOBAL BURDEN OF DISEASE
2004 UPDATE

Noncommunicable Diseases

Projected global deaths (2030)



What to do about it?

Since they are preventable, let's tackle their
major

NCD risk factors









How to address NCD epidemic?

THE LAW

more precisely

`regulatory mix`

evidence-based
effective and cost-effective
population wide and individual
multisectoral
multi-stakeholder
multilevel
affordable

action

through `the implementation of
international agreements and strategies,
and education, legislative, regulation and
fiscal measures`

What a role the **LAW** may play in NCD prevention?

Law in NCD

source of opportunities

source of constraints

only if **constraints** understood,
opportunities will be maximised.

Law in NCD

as

source of opportunities

Law & NCD

despite proliferation of health-rights,
role of law in promoting public health largely
unexplored and overall underestimated

BUT today growing interest in
REGULATION

Can LAW make
a difference
?

‘law specifically, and public policy more generally, are among **the most powerful tools** to improve population health’

Institute for Medicine, For the Public's Health: Revitalizing Law and Policy to Meet New Challenges, 2011.

‘the implementation of international agreements and strategies, and education, legislative, regulation and fiscal measures’

UN Political Declaration NCDs

3 ideas of why law matters

Normativity: law shapes norms

Deterrence through enforcement

Impact on underlying problem

YES, provided

We understand the phenomena: evidence

We define the target

We understand what it works: evidence

Who are the forces against

We acknowledge limits of the law and its rapid transformation



Open the Tool Box

` NCD regulatory toolbox'

- disclosure requirements
- regulation of marketing
- measures affecting product availability
- fiscal measures and subsidies
- performance-based regulation
- fundamental rights

+ self-regulation + educational campaigns +
monitoring schemes

common objective

promoting healthier lifestyles by
reducing exposure to a given risk factor

disclosure

Rationale: information asymmetry of credence goods

Aim: informed consumer choice

Pro: 1. social normativity

2. politically viable insofar as not a **warning**
(offset marketing efforts)

Con: effectiveness?

Marketing regulation

(and other forms of promotion)

Rationale: control of voluntary information

Aim: limit effect of marketing in promoting consumption

Pro: limit exposure to general/vulnerable

Con: impact on competition

Product availability

monopoly, product reformulation, age limits

Rationale: limit availability to reduce consumption

Pro: highly effective in controlling/limiting exposure

Con: alternative distribution channels
change in consumer preference

Fiscal measure

Tobacco, alcohol and 'Fat' taxes

Rationale: to induce drop in consumption

Pro: individuals sensitive to price

Con: regressive nature



self-regulation

code of conduct – platform

Rationale: alternative to regulation

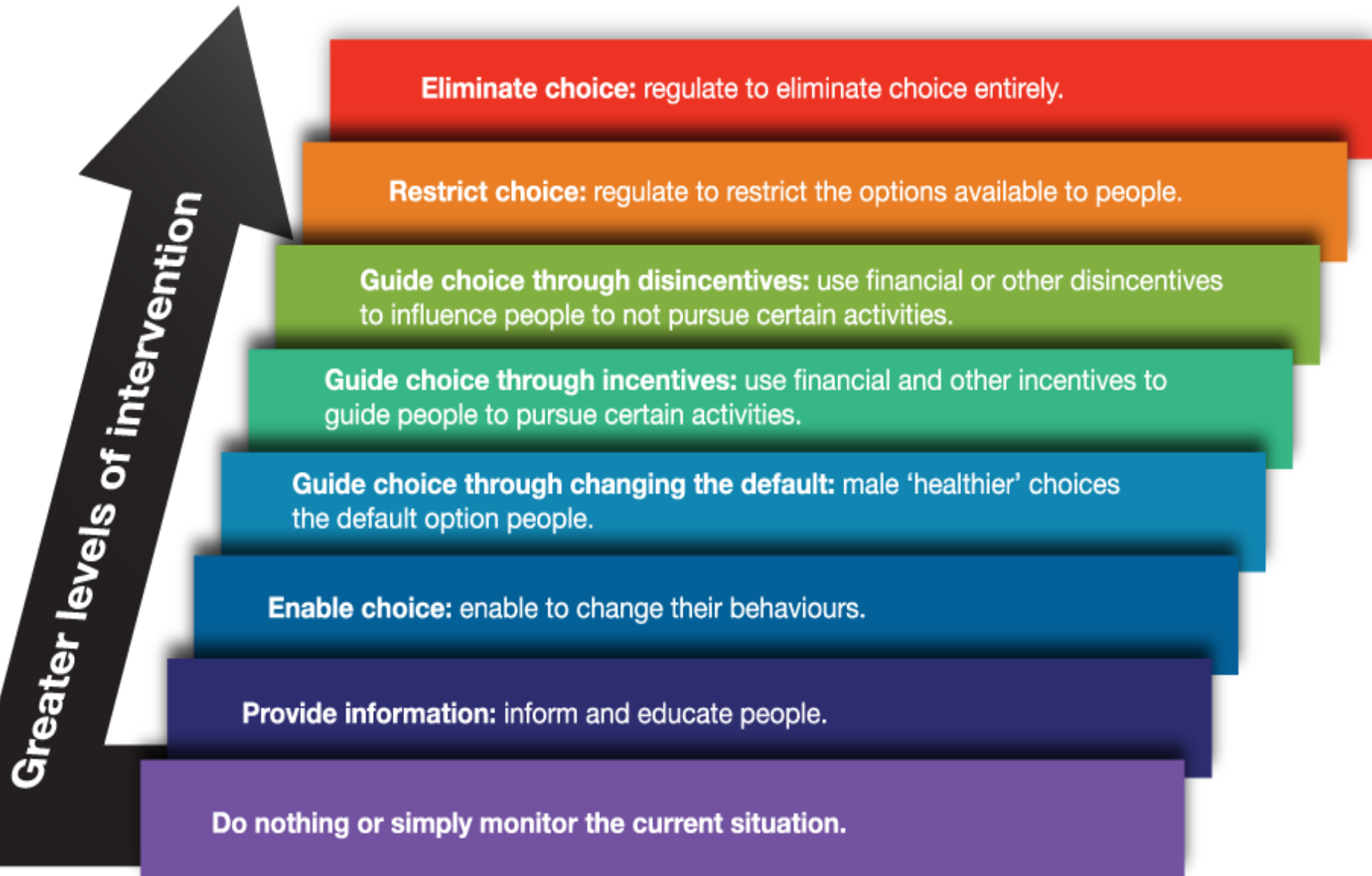
Pro: politically viable
cheap (no enforcement)

Contra: not always suitable
conflict of interest
regulatory capture

Supportive policies

- Educational campaigns
- Monitoring scheme

Nuffield intervention ladder



what **divide** them

different nature

different actors

different scope

what **unite** them

all require some legal intervention

depend on strong evidence-base

need support: monitoring and education

need to be tested and mixed

But there is more...

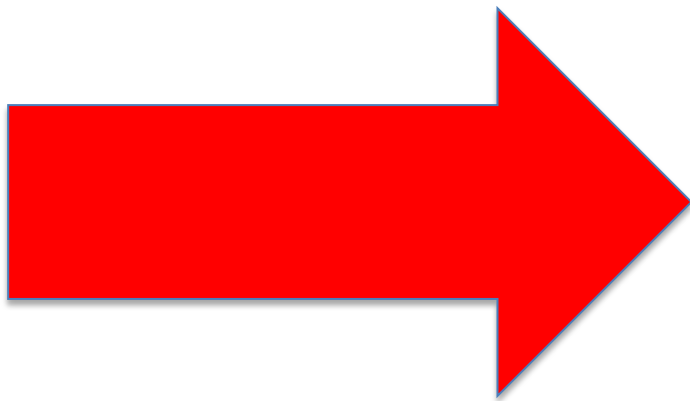
all presuppose 'rationality' of human action

humans are not



but





AnVall.org



GO COMBO'S ART



Behavioral SCIENCE



context matters



5 cups
270 calories



Tub
630 calories



3-inch diameter
140 calories



5-6-inch diameter
350 calories



333 calories



590 calories



Original 8-ounce bottle
97 calories



20-ounce bottle
242 calories



default matters

Portion Sizes Drive Consumption

People given larger portions simply eat or drink more

People given larger portion sizes of food eat approximately **20-50%** more, without reducing intake at later meals.

**20-50%
MORE**



People eating soup from self-refilling bowls ate **73%** more.

**73%
MORE**



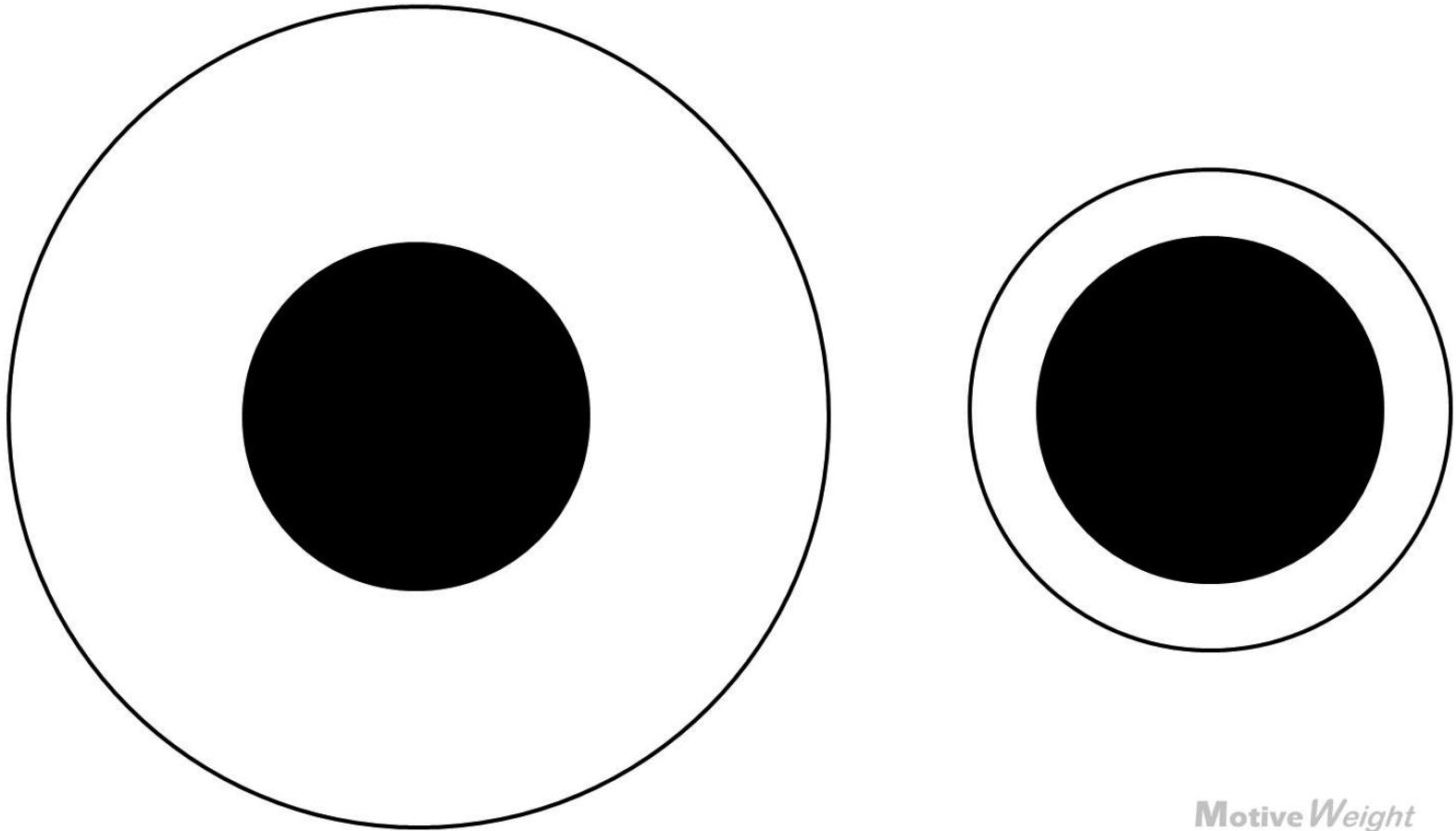
People given beverages **50%** larger consume **20%** more (women) to **33%** (men), with no decrease in food eaten.

**20%
MORE**

**33%
MORE**



When you use a smaller plate the food appears bigger and this tricks your brain into thinking you're eating more food.



social context matters



Historically, not areas of legal intervention

But if marketers do, should governments do the same?

- counter-nudging

warnings – front of pack – traffic labeling –

- public nudging

Choice-architecture: design of canteen, allocation







Nuffield intervention ladder



Law in NCD

as

source of constraints

NCD regulatory action

must be legally sound and scientifically
substantiated as
relevant industries ready to challenge

HENCE the need to know the **constraints**

constraints

- Legitimacy
- Legality
 - Constitutional
 - Trade
 - Fundamental rights
- Cultural
- Design

constraints

- Legitimacy
- Legality
 - Constitutional
 - Trade
 - Fundamental rights
- Cultural
- Design

Legal constraints

- Constitutional law
- International (trade & investment) law
- Fundamental rights

Constitutional constraints

Multilevel action is required, but:

- at what level of government to act?
- how to determine proportionality of action?

International trade constraints

- virtually all NCD preventive actions encroach on trade
- subject to international trade obligations and external scrutiny
- balancing of trade vs public health

Fundamental rights

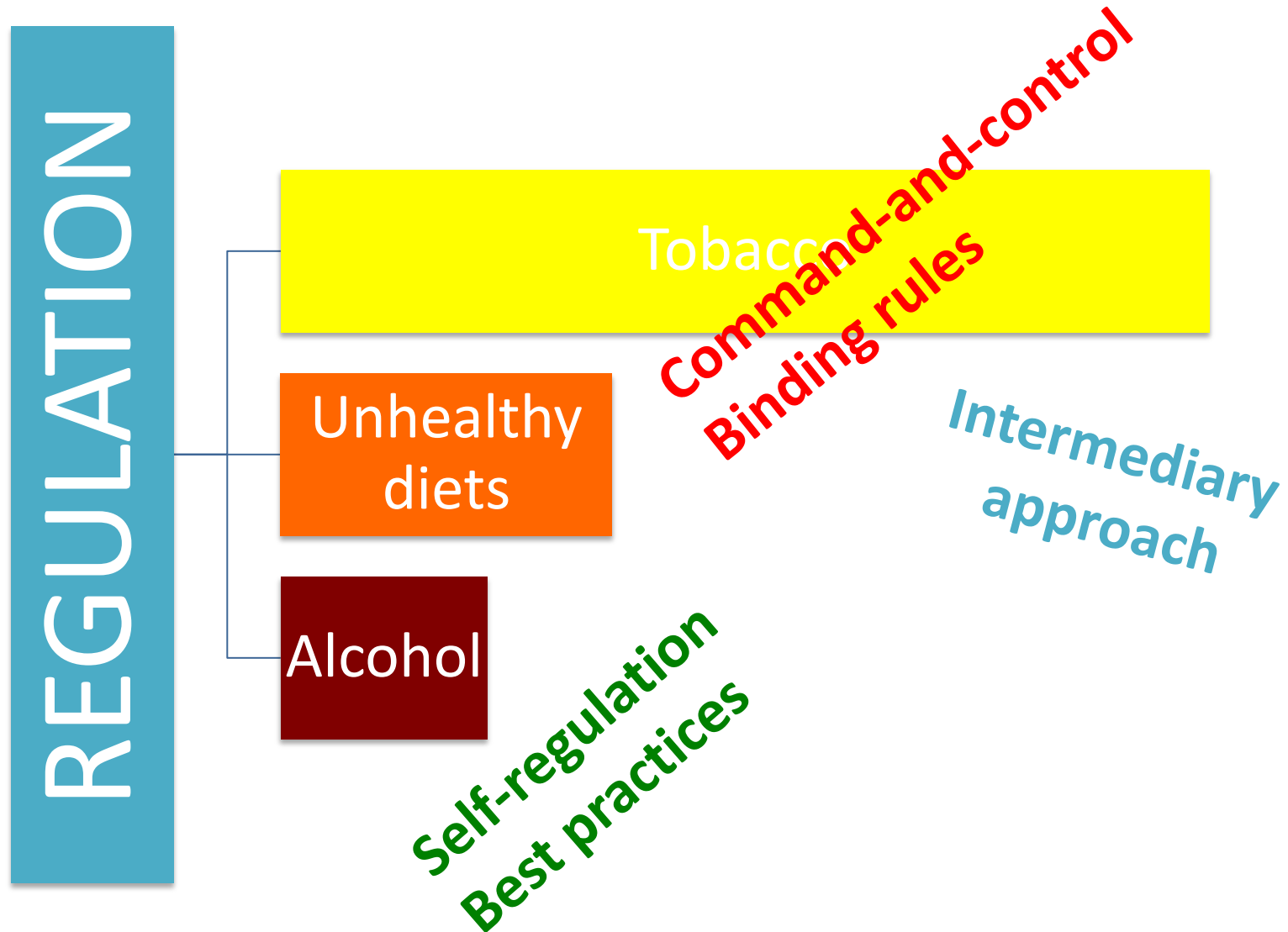
More often invoked by industry than citizens:

- the freedom of expression and information
- the freedom to choose an occupation
- the right to engage in work
- the freedom to conduct a business and
- the right to property

How to operationalize fundamental rights?

Where do we stand today?

NCD action varies in nature, scope and intensity depending on the risk factor under consideration:



No panacea

BUT

value of legal intervention and its inherent potential in stimulating progressive change appears considerable

AND

existing evidence about both size of NCD and effectiveness of law **require ACTION**

not **whether** but **how** to use
the LAW
in NCD prevention

health should become ‘the easier, default option rather than being agonizingly difficult’.

B. Thomas and L. Gostin, “Tackling the Global NCD Crisis: Innovations in Law & Governance”, *Journal of Law, Medicine & Ethics* (2013), 16, at 25.